

**FILED**

DEC 24 2014

MICHAEL E. KUNZ, Clerk  
By \_\_\_\_\_ Dep. Clerk**GAM**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**14 7289**

14-7289

ADRIENNE ESKRA

*Plaintiff,*

v.

WAL-MART STORES EAST, LP

*Defendant.*

CIVIL ACTION NO.

ARBITRATION CASE

**CIVIL ACTION COMPLAINT****I. PRELIMINARY STATEMENT**

1. This is a claim against the Defendant, Wal-Mart Stores East, LP, for personal injuries caused to Plaintiff, Adrienne Eskra, by the negligent acts and/or omissions of the Defendant and its agents, servants, employees, workmen and/or representatives.

**II. PARTIES**

2. Plaintiff, Adrienne Eskra, is an adult individual and citizen of the Commonwealth of Pennsylvania, residing therein at 20 E. Center Street, Wind Gap, PA 18091.

3. Defendant, Wal-Mart Stores East, LP, was and is now a business entity, believed to be a limited partnership, engaged in retail sales with a corporate headquarters located at 702 SW 8<sup>th</sup> Street, Bentonville, AR 72716.

4. At all times relevant hereto, the Defendant acted by and through its trustees, directors, agents, servants, employees, workmen and/or other representatives, who were, in turn, acting within the course and scope of their employment, agency and/or service for the same and under the direct control of Defendant.



\$400.00  
GAM

### **III. JURISDICTION AND VENUE**

5. Jurisdiction is conferred upon this Court by virtue of the parties' diversity of citizenship pursuant to 28 U.S.C. § 1332.

6. The amount in controversy in this action is in excess of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of costs and fees.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because the acts or omissions giving rise to the within claims occurred within the district and because Defendant is subject to personal jurisdiction within the district.

### **IV. STATEMENT OF CLAIMS**

8. At all times material herein, the Defendant, by and through its trustees, directors, agents, servants, workmen, employees and/or other representatives, acting within the course and scope of their employment, agency and/or service with the Defendant, owned, operated, controlled, leased, inspected, possessed, managed and/or maintained the premises known as Wal-Mart Store No. 2252 located at 3722 Nazareth Road, Easton, PA 18045.

9. On or about July 6, 2014, and for a long time prior thereto, it was the duty of the Defendant, by and through its trustees, directors, agents, servants, workmen, employees and/or other representatives, to keep and maintain the premises known as Wal-Mart Store No. 2252 located at 3722 Nazareth Road, Easton, PA 18045 in a reasonably safe condition for persons lawfully upon the premises, such as Plaintiff, Adrienne Eskra.

#### **COUNT I ADRIENNE ESKRA v. WAL-MART STORES EAST, LP NEGLIGENCE – PREMISES LIABILITY**

10. Plaintiff hereby incorporates by reference paragraphs one (1) through nine (9) of the within Complaint as though the same were fully set forth at length herein.

11. On or about July 6, 2014, Plaintiff, Adrienne Eskra, was walking inside the store on the aforesaid premises known as Wal-Mart Store No. 2252 when, suddenly and without warning and as a direct result of a defective and/or dangerous condition of the premises, Plaintiff slipped on a wet substance on the floor, believed to be coffee, thereby causing Plaintiff to fall and sustain various severe and permanent bodily injuries and losses as more fully set forth below.

12. The incident described in the preceding paragraphs of the within Complaint was caused solely by the negligence and carelessness of the Defendant, Wal-Mart Stores East, LP, by and through its agents, servants, workmen, employees and/or other representatives acting within the course and scope of employment for the same, generally and in the following particular respects:

- a) carelessly and negligently allowing the aforesaid premises to exist in a dangerous condition for a prolonged period of time so as to cause injury to the Plaintiff;
- b) carelessly and negligently failing to inspect the premises in such a manner so as to identify defects and prevent potential bodily injury to third parties such as the Plaintiff;
- c) carelessly and negligently failing to recognize the defect which caused the aforesaid substance to exist on the floor of the Defendant's premises and failing to timely remedy same;
- d) carelessly and negligently creating and allowing a dangerous condition to exist by failing to provide proper safety and operational instructions to workers at its aforesaid premises regarding routine inspections and maintenance of its store;
- e) carelessly and negligently failing to ensure that the Defendant's aforesaid premises could be traversed in a manner which would not cause a danger to potential third parties, such as the Plaintiff;
- f) carelessly and negligently failing to adequately and timely repair defects to said premises;
- g) carelessly and negligently failing to correct a dangerous and hazardous condition of which Defendant was aware or should have been aware;

- h) failing to warn persons lawfully upon the Defendant's premises, such as the Plaintiff, of the aforesaid dangerous condition;
- i) otherwise failing to provide a safe place for persons lawfully upon the Defendant's premises, such as the Plaintiff, to conduct their business;
- j) negligence by virtue of the doctrine of *respondeat superior*; and
- k) negligence by virtue of the doctrine of *res ipsa loquitur*.

13. Plaintiff, Adrienne Eskra, in no manner contributed to her injuries, which were the direct and proximate result of the Defendant's own negligence and or/carelessness.

14. As a result of the aforesaid negligence of the Defendant, Plaintiff, Adrienne Eskra, suffered severe injuries including, but not limited to, aggravation of pre-existing degenerative joint disease of the knees, cervicgia, and right knee pain, as well as aches, pains, mental anxiety and anguish and a severe shock to her entire nervous system. Plaintiff has in the past and will in the future be unable to engage in her usual activities, all to her great detriment and loss.

15. As a result of the aforesaid negligence of the Defendant, Plaintiff has been and will be obliged to receive and undergo medical attention and care and to expend various sums for the treatment of her injuries and incur such expenditures for an indefinite time in the future.

16. As a further result of the aforesaid accident, Plaintiff has in the past and may in the future suffer a loss of her earnings and/or earning power, and she may incur such loss for an indefinite period in the future.

17. Further, by reason of the aforesaid occurrence, Plaintiff has and/or may hereafter incur other financial expenses all in an effort to treat and cure herself of the injuries sustained in the aforesaid accident.

18. As a result of this accident, Plaintiff has or may have suffered injuries resulting in the serious and/or permanent loss of use of a bodily function and/or scarring, which may be in full or in part cosmetic disfigurements which are or may be permanent, irreparable and severe.

19. As a further result of this accident, Plaintiff has suffered a loss of the enjoyment of her usual duties, avocations, life's pleasures and activities, and the shortening of her life expectancy, all to her great detriment and loss.

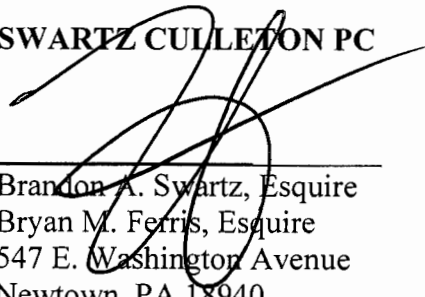
20. As a further result of the aforesaid accident, Plaintiff has suffered great and unremitting physical pain, suffering and mental anguish, all of which may continue in the future.

WHEREFORE, Plaintiff, Adrienne Eskra, demands judgment in her favor and against Defendant, Wal-Mart Stores East, LP, in an amount not in excess of \$150,000.00 together with costs of suit, interest and reasonable attorneys' fees, as well as any such other relief as the Court deems adequate, just and proper.

Respectfully,

**SWARTZ CULLETON PC**

By:



Brandon A. Swartz, Esquire  
Bryan M. Ferris, Esquire  
547 E. Washington Avenue  
Newtown, PA 18940  
T: (215) 550-6553  
F: (215) 550-6557

Attorneys for Plaintiff,  
Adrienne Eskra

Date: December 17, 2014



**GAM**

14 7289

JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Adrienne Eskra

(b) County of Residence of First Listed Plaintiff Northampton, PA  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Swartz Culleton PC-547 E. Washington Ave, Newtown, PA 18940

**DEFENDANTS**

Wal-Mart Stores East, LP

County of Residence of First Listed Defendant Benton, AR  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                                   |
|---|---------------------------------------|---------------------------------------|
| Citizen of This State   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1            |
| Citizen of Another State                                      | <input type="checkbox"/> 2            | <input type="checkbox"/> 2            |
| Citizen or Subject of a Foreign Country                       | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            |
| Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4            | <input type="checkbox"/> 4            |
| Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5            | <input checked="" type="checkbox"/> 5 |
| Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE  
12/12/2014

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

GAM

GAM

Case 5:14-cv-07289-GAM Document 1 Filed 12/24/14 Page 7 of 8  
5-14-17289  
UNITED STATES DISTRICT COURT

Submit by Email

Print Form

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 20 E. Center Street, Wind Gap, PA 18901

14 7289

Address of Defendant: 702 SW 8th Street, Bentonville, AR 72716

Place of Accident, Incident or Transaction: 567 Pennsylvania Route 100, Bechtelsville, PA 19505

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: Judge

Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases  
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☒ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify)

~Premises Liability

## ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, \_\_\_\_\_, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 12/17/2014

Attorney-at-Law

78344

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 12/17/2014

Attorney-at-Law

78344

Attorney I.D.#

CIV. 609 (6/08)

DEC 24 2014

**GAM**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

Adrienne Eskra

CIVIL ACTION

v.  
Wal-Mart Stores East, LP

A/R

**14 7289**  
NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ☐
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ☐
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ☒
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ☐
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ☐
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ☐

12/17/2014

Brandon A. Swartz

Plaintiff, Adrienne Eskra

**Date****Attorney at law****Attorney for**

215-550-6553

215-550-6557

bswartz@swartzculleton.com

**Telephone****FAX Number****E-Mail Address**

(Civ. 660) 10/02

DEC 21 2014